

## **Residential Tenancies Board**

### **RESIDENTIAL TENANCIES ACT 2004**

#### **Report of Tribunal Reference No: TR0322-005356 / Case Ref No: 1021-73340**

<b>Appellant Tenant:</b>	Julija Grinevica
<b>Respondent Landlord:</b>	Gillian Walsh
<b>Address of Rented Dwelling:</b>	54 Temple Court, Northwood, Santry, Dublin 9
<b>Tribunal:</b>	Brian Murray (Chairperson) Helen-Claire O'Hanlon, Eoin Byrne
<b>Venue:</b>	Virtual hearing via Microsoft Teams
<b>Date &amp; time of Hearing:</b>	16 June 2022 at 10:30 a.m.
<b>Attendees</b>	Julija Grinevica, Appellant Tenant Vadim Karpenko, Appellant Tenant's representative Alexander Topolinski Appellant Tenant's witness Gillian Walsh, Respondent Landlord Anita Phillips, Respondent Landlord's witness
<b>In attendance:</b>	RTB appointed stenographer/logger

#### **1. Background:**

On 13 October 2021 the Tenant made an application to the Residential Tenancies Board ("the RTB") pursuant to Section 78 of the Act. The matter was referred to an Adjudication which took place on 27 January 2022. The Adjudicator determined that:

The Applicant Tenant's application, regarding deposit retention, the Respondent Landlord's breach of obligations under the Act in failing to provide peaceful possession of the property and the alleged unlawful termination of the tenancy, in respect of the tenancy of the dwelling at 54 Temple Court, Northwood, Santry, Dublin 9, Ireland is not upheld.

Subsequently, an appeal was received and the RTB constituted a Tenancy Tribunal and appointed Brian Murray, Helen-Claire O'Hanlon and Eoin Byrne as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Brian Murray to be the chairperson of the Tribunal ("the Chairperson").

On 16 June 2022 the Tribunal convened a Virtual hearing via Microsoft Teams.

#### **2. Documents Submitted Prior to the Hearing Included:**

RTB Tribunal case files.

#### **3. Documents Submitted at the Hearing Included:**

None.

#### **4. Procedure:**

The Chairperson opened the Hearing by asking the Parties attending the Virtual Hearing to identify themselves and to identify in what capacity each was attending the Tribunal. The Chairperson confirmed with the Parties attending that they had received the relevant papers from the RTB in relation to the case and that they had received the RTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed: that the Appellant Tenant would be invited to present her case; that there would be an opportunity for cross examination of this evidence by the Respondent Landlord; that the Respondent Landlord would then be invited to present her evidence, that there would be an opportunity for cross examination of this evidence by the Appellant Tenant or her representative and at the end of this process both Parties would be invited to make their final submissions to the Tribunal.

The Chairperson stressed that all evidence would be taken on affirmation and be recorded by the official stenographer/recording technician present and he reminded the Parties attending that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 or up to 6 months imprisonment or both.

The Chairperson also reminded the Parties that the hearing was a de novo hearing and as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the Parties and could be appealed to the High Court on a point of law.

Those giving evidence gave their affirmations.

#### **5. Submissions of the Parties:**

Evidence of the Appellant Tenant:

The Appellant Tenant stated that she travelled to Latvia on holiday on 4 July 2018. She stated that it was her intention to be in Latvia for one week and that she had return flights already booked when she travelled to Latvia.

The Appellant Tenant stated that on the first day that she was in Latvia, she was the victim of a mugging and her phone was stolen. In addition, she stated that she was hospitalised for one week following the incident.

The Appellant Tenant stated that prior to her departure to Latvia, she telephoned the Respondent Landlord to inform that she was going away for a week's holiday. She stated she did this as a courtesy to the Respondent Landlord and also because she had plants in the dwelling and she asked the Respondent Landlord to care for the plants in her absence. She stated that this occurred by way of telephone call with the Respondent Landlord.

The Appellant Tenant stated that during her stay in hospital in Latvia, the Respondent Landlord contacted her mother on Facebook and messaged her to ask her how she was.

The Appellant Tenant stated that she sent a text message from her mother's phone to state that she would pay the rent when she got out of hospital and returned to Dublin.

The Appellant Tenant confirmed that she paid the rent by way of manual electronic funds transfer every month and that she was in receipt of rent supplement.

The Appellant Tenant stated that she returned to Dublin on 23 August 2018. She stated that on the evening she returned, she stayed in her friend's home as it was very late at

night and she had her children with her. She stated that the following morning she went to the dwelling. The Appellant Tenant explained that there was a locked entrance to the building which contains the dwelling which was opened by way of a combination. The Appellant Tenant stated that when she sought to open it on 24 August 2018, the combination had been changed and that this was the normal procedure for it to be changed every two months. She then stated that a neighbour of hers gave access and when she then sought to enter her own dwelling, she was unable to because she stated that the locks had been changed.

The Appellant Tenant stated that she rang An Garda Siochana who informed her that they were unable to do anything in this regard. The Appellant Tenant stated that she then rang her friend Mr Alexander Topolinski who came to her assistance and brought her to a bed and breakfast. The Appellant Tenant explained that she had a Latvian mobile phone in her possession at this time but she was not in possession of the Respondent Landlord's phone number. She stated that the Respondent Landlord had told her that she was only to contact from her own Irish mobile phone number.

The Appellant Tenant referred the Tribunal to the invoice for the bed-and-breakfast, which was contained on Tribunal Case File 1, page 51.

The Appellant Tenant stated that she went to a health centre in Ballymun and that a social worker agreed to assist her. In that regard, the Appellant Tenant referred the Tribunal to Tribunal Case File 1, page 84 which she asserted was a letter from the aforementioned social worker addressed to the Appellant Tenant and dated 14 January 2022. The letter, amongst other things, sets out details of contact between the social worker and the Respondent Landlord on 28 and 29 August 2018 respectively.

The Appellant Tenant stated that the social worker, who worked for the community mental health team, arranged for the Appellant Tenant to be treated in hospital for a period of time and told her that she would try and fix the problem with her tenancy.

The Appellant Tenant's evidence was that while she was in hospital, the social worker informed her that she was unable to resolve the problem in relation to her tenancy and that she was going to be homeless essentially.

The Appellant Tenant stated that all of her belongings were left in the apartment and that she did not get all of them back.

The Appellant Tenant stated that the belongings which she did not get back included, some clothes, an Xbox, a kitchen pressure cooker and a television. She stated that Mr Topolinski was contacted by the social worker who arranged a date with the Respondent Landlord on 3 August for items to be collected.

The Appellant Tenants then referred the Tribunal to Tribunal Case File 1, page 29 which was a photograph of text messages between the Appellant Tenant and the Respondent Landlord. In particular, the Appellant Tenant referred to a text message from the Respondent Landlord which requested that the Appellant Tenant did not contact the Respondent Landlord again. This text message was sent, according to the Appellant Tenant, on 6 September 2018.

Evidence of Alexander Topolinski:

Mr Topolinski stated that he tried to contact the Respondent Landlord. He asserted that when he made contact with the Respondent Landlord, the Respondent Landlord asserted that she was owed money. He stated that he made this contact with the Respondent

Landlord through Facebook in August 2018. He stated that the Appellant Tenant's mother asked him to contact the Respondent Landlord to say that she would be paying her rent.

Mr Topolinski stated that the Respondent Landlord informed him that she would only deal directly with the Appellant Tenant and through her Irish mobile number only.

He stated that following this, the social worker called him and told him to come to the Appellant Tenant's dwelling on **3 August 2018** at 4:30 PM in order to collect the Appellant Tenant's belongings. He stated that he was told that if he did not arrive on time, the Appellant Tenant's belongings would be thrown out.

He stated that he arrived on time but he was not allowed into the apartment and the Appellant Tenant's belongings were just being handed out to him. He stated that the Respondent Landlord was present with another man and she started shouting at him and stating that she was owed money. He stated that he was allowed in to unscrew the children's bunk bed. He said when he was in the apartment, he saw a television but he did not see an Xbox. He said the children's toys were not given back but that he did not remember asking for them.

Later in the hearing, Mr Topolinski gave evidence that he received a text message from the Respondent Landlord stating she was going to evict the Appellant Tenant. He said the text message was dated 7 August 2018.

Evidence of the Respondent Landlord:

The Respondent Landlord stated that the Appellant Tenant moved in to the dwelling on 9 September 2017 and signed a 24 month lease with her letting agent.

She said she met with her prior to her moving in and she was aware that she had two young children. She stated that the Appellant Tenant paid a month's rent of €1,700 and a security deposit prior to moving in.

She stated that she paid her rent for the following nine months up until 11 June 2018.

She stated that she would receive the rent every month by way of electronic funds transfer.

The Respondent Landlord stated that at the start of July, the Appellant Tenant telephoned her to say that she was going home for a week and asked would she water her plants for her. The Respondent Landlord stated that she thought this request was a little bit odd but, as she lived nearby, she said she would as it wasn't a big deal for her to do that.

The Respondent Landlord stated that she went to the dwelling twice during the week and on her second visit, she noticed three business cards from An Garda Siochana and a letter from social services.

The Respondent Landlord stated that on 13 July 2018, she asked the Appellant Tenant when she was returning. She stated that she did not get a response from the Appellant Tenant and she then referred the Tribunal to a further text message that she sent the Appellant Tenant on 20 July 2018. This text message stated:

"What is going on? I'm so annoyed with you. No message, nothing! You have left for good. Call me immediately. Jill"

This message was contained at Tribunal Case File 1, page 34.

The Respondent Landlord's evidence was that the Appellant Tenant had left all of her belongings in the apartment and all of her children's belongings. She stated that on 31

August 2018, Mr Topolinski called her to state that he had permission to collect the Appellant Tenant's belongings.

The Respondent Landlord stated that the locks were not changed in the dwelling until 6 September 2018.

The Respondent Landlord denied having any contact or communication with the social worker as alleged by the Appellant Tenant and asserted her belief that the letter submitted which purported to be from the social worker was completely fabricated.

The Respondent Landlord stated that the apartment was then rented out again from November 2018.

The Respondent Landlord was questioned by the Tribunal in relation to the text message dated 20 July 2018. In particular, the number appears to have been recorded in the Respondent Landlord's address book as "Juliet Latvia". In particular, the Respondent Landlord was asked how she was in possession of the Appellant Tenant's Latvian number. In response, the Respondent Landlord responded that she believed that it was a social media contact or perhaps she had been texted from a different number.

The Respondent Landlord gave evidence that she had decided that the tenancy was terminated after no contact was made for a period of two months. She described it as "radio silence". She stated that she had tried to contact the Appellant Tenant to see if she was okay and that she was concerned because of the Garda business cards had been left in the property. The Respondent Landlord expressed her view that the Appellant Tenant had set out with the intention to leave the property when she returned from Latvia and this was evidenced by the fact that she did not go to the property when she arrived back but rather, went to a friend's property.

In addition, the Respondent Landlord submitted that the lease had been doctored in relation to the rent amount.

The Respondent Landlord confirmed, when questioned by the Tribunal, that she was not seeking any redress from the RTB but rather, wanted the entire matter to be over.

In response to Mr Topolinski's evidence that he received text message from the Respondent Landlord dated 7 August 2018, the Respondent Landlord stated that she never sent that text message and he she did not have Mr Topolinski's number.

Cross-examination of the Respondent Landlord by the Appellant Tenant's representative:

The Respondent Landlord was asked why she informed the Appellant Tenant not to contact her again. In response, the Respondent Landlord stated that it was because she had to take a day off work in order to disassemble the Appellant Tenant's furniture and to meet with Mr Topolinski and clean up the dwelling. In addition, the Respondent Landlord stated that the Appellant Tenant had kept all of the fobs for the front door, the bins and the keys for the post-box and the entrance. She outlined that all of this was a major inconvenience for her and she was frustrated and annoyed with the Appellant Tenant.

The Respondent Landlord was asked how much the Appellant Tenant paid the Respondent Landlord when she moved in. The Respondent Landlord's response was that the Appellant Tenant paid two months' rent and a security deposit. The Appellant Tenant's representative then put to the Respondent Landlord that it was the Appellant Tenant's case that she paid one month's rent and a security deposit.

Evidence of Anita Phillips:

Ms Phillips simply stated that she was accompanying the Respondent Landlord at the adjudication hearing and was only in a position to give evidence as to what was said at the adjudication hearing.

Closing submissions on behalf of the Appellant Tenant:

The Appellant Tenant's representative stated that the Appellant Tenant did not receive a warning notice or a notice of termination. He submitted that the Respondent Landlord could have contacted the Appellant Tenant in advance but she did not. He submitted that the Respondent Landlord has certain obligations under the Residential Tenancies Act, 2004 and it is the Appellant Tenant's belief that she was unlawfully evicted.

The Respondent Landlord did not make a closing submission.

## **6. Matters Agreed Between the Parties:**

Address: 54 Temple Court, Northwood, Santry, Dublin 9

Tenancy commencement: 8 September 2017

Rent amount: €1,700

Deposit amount: €1,700 (retained by landlord)

Tenant in occupation: No

Notice served date (& method): None served by either side

Other agreed issues: Rent paid to cover rent due on 8 June 2018

## **7. Findings and Reasons:**

Finding 1:

The Tribunal finds that the Respondent Landlord carried out an unlawful termination of the tenancy.

Reasons:

A tenancy agreement may only be terminated in accordance with the provisions set out in the Residential Tenancies Act of 2004. In particular section 58 (1) of the Act prohibits the termination of a tenancy by a landlord by means of re-entry.

In this case no warning letter or notice of termination was served by the Respondent Landlord. The Respondent Landlord's position was she was entitled to deem the tenancy as having been terminated by the Appellant Tenant in circumstances where the Appellant Tenant had vacated the dwelling and was in arrears of rent.

Section 37 (2) of the 2004 Act states that:

Part 4 tenancy shall also be deemed to have been terminated by the tenant upon any rent owed by him or her being in arrears for a period of 28 days or more if—

(a) whether before or after the end of that period, the tenant has vacated the dwelling, and

(b) no notice of termination has been served by the tenant in respect of the tenancy.

However, in this case, the Tribunal does not believe that the Respondent Landlord was entitled to deem the tenancy as having been terminated as the preponderance of the evidence was that the Appellant Tenant had not vacated the dwelling.

The Tribunal is satisfied on the evidence that the Appellant Tenant had returned to Ireland from Latvia on 23 August 2018. The Tribunal also accepts the Appellant Tenant's evidence that she sought to access her dwelling on 24 August 2018 but was unable to due to the locks being changed.

In addition, the Respondent Landlord in her own evidence stated that the Appellant Tenant had left all of her belongings in the apartment and all of her children's belongings.

Accordingly, there were not reasonable grounds to deem that the Appellant Tenant had vacated the dwelling.

The Tribunal was satisfied that the locks were changed at some point on or before 24 August 2018 and therefore, this amounted to an unlawful termination of the tenancy.

In the particular circumstances of this case and the nature of the breach committed by the Respondent Landlord, the Tribunal felt it was appropriate to award €2,500 damages to the Appellant Tenant, in particular having regard to the nature of the inconvenience caused to the Appellant Tenant by the summary termination of her tenancy.

#### Finding 2:

The Appellant Tenant failed in her duty pursuant to section 16 (a)(i) of the Act to pay rent as it fell due. The Landlord is entitled to payment of arrears of rent of €2,650.13.

#### Reasons:

The Tribunal is satisfied that the Tenant was in arrears of rent of approximately 6 weeks which the Tribunal estimates to amount to €2,650.13. The rent due on 8 July 2021 was not paid. The Tenant became aware the tenancy had been terminated around 24 August. She nonetheless owed rent for the period for which she had access to the dwelling. The total period is one month and 17 days. The daily rent is  $\text{€}1,700 \times 12 / 365 = \text{€}55.89$ . 17 days rent at €55.89 per day is €950.13. Adding this to €1,700 gives a figure of €2,650.13. This should be paid by the Tenant to the Landlord.

#### Finding 3:

The Respondent Landlord is entitled to retain the deposit of €1,700 in respect of default of rent.

#### Reason:

Section 12(1)(d) of the Residential Tenancies Act 2004, as amended ("the Act") states:

"In addition to the obligations arising by or under any other enactment, a landlord of a dwelling shall subject to subsection (4), return or repay promptly any deposit paid by the tenant to the landlord on entering into the agreement for the tenancy or lease."

Section 12(4) of the Act states:

"Subsection (1)(d) applies and has effect subject to the following provisions:

(a) no amount of the deposit concerned shall be required to be returned or repaid if, at the date of the request for return or repayment, there is a default in—

(i) the payment of rent, or any other charges or taxes payable by the tenant in accordance with the lease or tenancy agreement, and the amount of rent or such other charges or taxes in arrears is equal to or greater than the amount of the deposit, or

(ii) compliance with section 16(f) and the amount of the costs that would be incurred by the landlord, were he or she to take them, in taking such steps as are reasonable for the purposes of restoring the dwelling to the condition mentioned in section 16(f) is equal to or greater than the amount of the deposit,

(b) where, at the date of the request for return or repayment, there is a default in—

(i) the payment of rent, or any other charges or taxes payable by the tenant in accordance with the lease or tenancy agreement, or

(ii) compliance with section 16(f), and subparagraph (i) or (ii), as the case may be, of paragraph (a) does not apply, then there shall only be required to be returned or repaid under subsection (1)(d) the difference between the amount of rent or such other charges or taxes in arrears or, as appropriate, the amount of the costs that would be incurred in taking steps of the kind referred to in paragraph (a)(ii).”

The Tribunal accepts that the Respondent Landlord is entitled to use the deposit of €1,700 towards the rent arrears. Accordingly, the deposit was validly withheld.

Finding 4:

There was insufficient evidence that the Respondent Landlord threw away belongings of the Appellant Tenant or retained belongings of the Appellant Tenant.

Reason:

The Appellant Tenant stated that the Respondent Landlord had thrown away many of her belongings which included some clothes, an Xbox, a kitchen pressure cooker and a television.

However, there was little or no evidence presented to the Tribunal to support this aspect of the dispute and no vouching documentation was produced. Therefore, the Tribunal could not uphold this aspect of the Appeal. The burden in this respect was on the Appellant Tenant. She has not shown that belongings were retained by the Respondent Landlord or disposed of by her. She had an opportunity to remove belongings that were left in the dwelling and, while that is not satisfactory and a landlord may not summarily end a tenancy, she nonetheless has not shown that other belongings were retained or otherwise disposed of.

The net position is thus that the Respondent Landlord shall pay to the Appellant Tenant the sum of €1,549.87. This comprises the sum of damages of €2,500 outlined above plus the deposit of €1,700, minus the figure of rent arrears due of €2,650.13.

Given the size of this sum and the right of the Appellant Tenant to a prompt remedy, this should be paid within 28 days of the date of issue of the determination order of the Board.

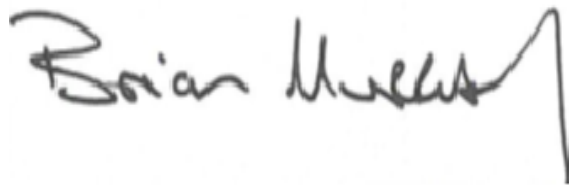
## **8. Determination:**

In the matter of Julija Grinevica (Appellant Tenant) and Gillian Walsh (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004 that:



1. The Respondent Landlord carried out an unlawful termination of the tenancy and the Appellant Tenant is entitled to €2,500 damages in this regard.
2. The Appellant Tenant is in rent arrears of €2,650.13.
3. Respondent Landlord is entitled to retain the amount of the security deposit of €1,700 and the Respondent Landlord is due a net amount of €800 in outstanding rent arrears.
4. Having offset the amounts due by each party to each other, the Respondent Landlord shall pay a total sum of €1,549.87 to the Appellant Tenant within 28 days of the date of issue of the Order.

The Tribunal hereby notifies the Residential Tenancies Board of this Determination made on 19/07/2022.

A handwritten signature in black ink, appearing to read 'Brian Murray', with a long vertical stroke extending downwards from the end of the signature.

**Signed:**

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**Brian Murray Chairperson**

For and on behalf of the Tribunal.